

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BED BATH & BEYOND INC.
SECTION 16(b) LITIGATION

No. 1:22-cv-09327-PGG

**PLAINTIFF JUDITH COHEN'S RESPONSE
TO NOTICE OF SUGGESTION OF BANKRUPTCY**

Plaintiff Judith Cohen respectfully submits this response to the Notice of Suggestion of Bankruptcy for Bed Bath & Beyond, Inc. ("BBBY") and certain of its Affiliates and Automatic Stay of Proceedings filed on April 25, 2023 (ECF No. 50).

Plaintiff Cohen joins Augenbaum's Response to Notice of Suggestion of Bankruptcy (ECF No. 51) and submits the following facts in further support thereof:

1. Nominal Defendant BBBY appears to agree that any Section 16(b) claims against Defendants here are not assets of the Debtor estate because it has not included any claims against any Defendant in any list of assets included in the Debtor's Notice of Filing of Revised Order(s) Approving Auction and Bidding Procedures and other relief. *See In Re Bed Bath & Beyond, Inc.*, Case No. 23-13359 (VFP) Bankruptcy Docket at ECF No. 7.

2. BBBY has not sought any relief in the Bankruptcy Court from the March 24, 2022 "Cooperation Agreement" contract it has with Defendant RC Ventures, Inc., which prohibits BBBY from "prosecuting or joining" any litigation against RC Ventures and/or Ryan Cohen. Cohen Am. Cmpl't. (ECF No. 28) ¶ 7.

3. In the PSLRA securities fraud class action, Judge McFadden denied the Individual Defendants' motion for an extension of time to file a reply to their motions to dismiss based upon BBBY's Notice of Suggestion of Bankruptcy. *See SI v. Bed Bath and Beyond Corporation, et al.*, No. 22-cv-02541 (TNM) at ECF Nos. 81, 83, 84 and 85 and "Minute Order" dated May 1, 2023.

BBBY's actions and inactions with respect to the claims and actions at issue here, as noted above, should be considered as admissions that the 16(b) claims asserted herein are not assets of the Estate and not affected by Code Section 362, as held in the thorough and well-reasoned *Schaffer ex rel. Lasersight, Inc. v. CC Investments, LDC*, 286 F. Supp. 2d 279 (S.D.N.Y. 2003).

Therefore the Court should not stay this action.

Dated: May 4, 2023

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